

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HENDRICK BLOCK,

Plaintiff,

v.

ANY MERCED INC.,

Defendant.

Case No. 1:21-cv-01251-JLT-EPG

ORDER VACATING HEARING,
REQUIRING SUPPLEMENTAL
BRIEFING AS TO SERVICE

(ECF No. 26)

This matter is before the Court on Plaintiff Hendrik Block's motion for default judgment in this case brought under the American with Disabilities Act and California's Unruh Act, alleging that Defendant Any Merced Inc., identified as owning, operating, and/or leasing the relevant Facility, denied Plaintiff full and equal enjoyment and use of the goods, services, facilities, privileges and accommodations offered at the Facility during Plaintiff's visit. (ECF No. 26). However, before addressing the motion, the Court will order Plaintiff to file a supplemental brief in support of the motion for default judgment, and will thus vacate the hearing set for May 27, 2022, to permit Plaintiff time to file, and for the Court to consider, the supplemental information presented. (ECF Nos. 26, 27).

"Before assessing the merits of a default judgment," a court must address certain preliminary issues, such as "the adequacy of service on the defendant." *Forestiere v. Bazzi*, No. 20-cv-03543-DMR, 2021 WL 2638052, at *2 (N.D. Cal. June 8, 2021), *report and*

1 *recommendation adopted*, No. 20-CV-03543-WHO, 2021 WL 2633393 (N.D. Cal. June 25,
 2 2021). As to service, Plaintiff’s motion asserts that “Defendant was properly served pursuant to
 3 Federal Rule of Civil Procedure 4(h)(1)(B)) by delivering a copy of the summons and Complaint
 4 to Sulthan Thabit, its director.” (ECF No. 26-1, p. 10; *see* ECF No. 21).

5 Federal Rule of Civil Procedure 4(h)(1)(b) provides that “a domestic or foreign
 6 corporation, or a partnership or other unincorporated association that is subject to suit under a
 7 common name, must be served” by a plaintiff “delivering a copy of the summons and of the
 8 complaint to an officer, a managing or general agent, or any other agent authorized by
 9 appointment or by law to receive service of process and--if the agent is one authorized by statute
 10 and the statute so requires--by also mailing a copy of each to the defendant.” Here, Plaintiff
 11 contends that service was proper under this Rule because Plaintiff delivered the summons and
 12 complaint to Thabit, Defendant’s director. In support, Plaintiff attaches a “statement of
 13 information” from the California Secretary of State, which identifies Thabit as a director of Any
 14 Merced, Inc., and Plaintiff references the proof of service, stating that Thabit was personally
 15 served with the summons and complaint on February 6, 2022. (ECF No. 21; ECF No. 26-3, p.
 16 16).

17 Plaintiff’s purported service was made on a director, who is not necessarily “an officer, a
 18 managing or general agent” as specifically listed under Rule 4(h)(1)(B). While, the Ninth Circuit
 19 has concluded that service is not strictly limited to such categories of persons, service must “be
 20 made upon a representative so integrated with the organization that he will know what to do with
 21 the papers. Generally, service is sufficient when made upon an individual who stands in such a
 22 position as to render it fair, reasonable and just to imply the authority on his part to receive
 23 service.” *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th
 24 Cir. 1988) (internal quotation marks and citations omitted). Determining whether a person fits this
 25 description requires “a factual analysis of that person’s authority within the organization.” *Id.*
 26 (internal citation omitted).

27 Here—although Plaintiff identifies Thabit as a director—the Court believes a
 28 supplemental filing is warranted that offers additional facts and argument showing that the Thabit

1 was a person with sufficient authority to accept service. *See Aussieker v. M&S Green-Power*
2 *Energy, Inc.*, No. 2:18-CV-03234-JAM-AC, 2019 WL 2183783, at *3 (E.D. Cal. May 21, 2019)
3 (“Beyond [the] title [of manager]—which could mean many different things depending on the
4 business’s size and structure—there is no indication of McCloud’s particular role at M&S.
5 Without more information as to McCloud’s authority within the company, the undersigned cannot
6 conclude that M&S was properly served [in part, under Rule 4(h)(1)(B)] by leaving the service
7 papers with him.”).

8 Additionally, the Court notes that Rule 4(e)(1) permits service by “following state law for
9 serving a summons in an action brought in courts of general jurisdiction in the state where the
10 district court is located or where service is made.” One provision that might be applicable here is
11 California Code of Civil Procedure § 416.10(b), which provides that a corporation may be served
12 by delivering a copy of the summons and complaint “[t]o the president, chief executive officer, or
13 other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or
14 assistant treasurer, a controller or chief financial officer, a general manager, or a person
15 authorized by the corporation to receive service of process.” While it is not clear whether
16 Plaintiff’s service would be sufficient under this provision, if Plaintiff wishes to rely on this
17 position, it may explain that in a supplemental briefing, and should likewise provide details and
18 argument regarding whether Thabit’s position was sufficient to authorize Thabit to accept service
19 on behalf of Defendant. *See Aussieker*, 2019 WL 2183783, at *3 (noting that more information
20 was needed as to person’s authority within company to establish service under § 416.10).

21 Based on the foregoing, IT IS ORDERED as follows:

- 22 1. The hearing set for May 27, 2022 (ECF Nos. 26, 27) is vacated;
- 23 2. Plaintiff shall have until June 10, 2022, to file a supplemental brief in support of
24 Plaintiff’s motion for default judgment, specifically addressing how service was properly
25 achieved under Rule 4(h)(1)(B). Alternatively, Plaintiff may argue that service was properly
26 achieved under a separate provision by specifically identify such provision and addressing how
27 service was met under the provision’s requirements for service.

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3. The Court will reset the hearing if necessary at a later date.

IT IS SO ORDERED.

Dated: May 23, 2022

/s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE